

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TOM WINTERS,

Plaintiff,

v.

Case # 14-CV-6435-FPG

DECISION AND ORDER

CASELLA WASTE SYSTEM, INC., ET AL.,

Defendants.

This action was commenced by Plaintiff Tom Winters on July 30, 2014, when he filed his Complaint in this action (Dkt. # 1), and on August 1, 2014, the Clerk of the Court issued Summons for the named Defendants. By Motion dated October 30, 2014, the Defendants have moved to dismiss this action under Fed. R. Civ. P. 12(b)(5) for lack of jurisdiction, arguing that any service of the Complaint and Summons that occurred was legally insufficient. Dkt. # 6.

Service in federal civil actions is governed by Rule 4 of the Federal Rules of Civil Procedure. Under Rule 4(m), the Plaintiff must serve the Defendants “within 120 days after the complaint is filed.” In this case, less than 120 days have elapsed since the Complaint was filed. As a result, I need not address at this time whether the method of service used in this case thus far was sufficient, because even if it were not, the Plaintiff still has several weeks in which he could perfect service within the 120 day limitation of Rule 4(m).

As a result, the Defendants Motion to Dismiss (Dkt. # 6) is premature, and is therefore DENIED WITHOUT PREJUDICE.

SO ORDERED.

DATED: October 31, 2014
 Rochester, New York

HON. FRANK P. GERACI, JR.
United States District Judge